GUIDE TO The Industrial Relations Act

Ministry of Labour
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GUIDE TO THE INDUSTRIAL RELATIONS ACT

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Preface

The Industrial Relations Act of British Columbia is the statute that regulates labour relations and collective bargaining in this Province. Whether you are an employee or an employer, it is important that you understand your rights and obligations under the Act. This Guide is an introduction to the operation of the Industrial Relations Act.

As you read through the information that follows, bear in mind that this Guide is not a legal document. Rather, it is intended only as an introduction for those who are unfamiliar with the Industrial Relations Act. Any statute is subject to amendment and certain sections of the Industrial Relations Act, although enacted by the Legislature, have not yet been brought into force. In addition, the Act is subject to legal interpretation by the Industrial Relations Council. If you require current or more detailed information, you should consult the Act itself as well as the written decisions of the Industrial Relations Council.

The Council is always willing to provide general information about the Act or the Council's operations but will not provide legal advice. Persons with specific problems or questions related to labour law should consult an advisor who is familiar with the terms of the Act and the interpretations given to it by the Industrial Relations Council.

Copies of the Industrial Relations Act may be obtained by writing to Crown Publications Inc., 546 Yates Street, Victoria, B.C. V8W 1K8. Copies of the Industrial Relations (Voting) Regulation which governs voting procedures under the Act are also available at Crown Publications. The Industrial Relations Council also publishes regulations concerning its own

administrative procedures entitled the Industrial Relations (Practice and Procedure) Regulation, more commonly referred to as the "Industrial Relations Council Rules". Copies of the Rules may be obtained from the Council.

Copies of the written decisions of the Industrial Relations Council can be obtained from the Council.

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Chapter 1
The Industrial Relations Act

The statute which preceded the Industrial Relations Act was the Labour Code. In 1987 the Legislature enacted Bill 19 (the Industrial Relations Reform Act) which amended the Labour Code and renamed it the Industrial Relations Act. Most of the provisions of the Labour Code remained in force and were included in the Industrial Relations Act.

The Industrial Relations Act is primarily concerned with collective bargaining and labour-management relations in this Province. The Act guarantees the right of every employee to join a union:

> Every employee is free to be a member of a trade union and to participate in its lawful activities (Section 2(1)).

Employers are equally free to be members of an employers' organization.

Many of the Act's provisions are designed to protect these fundamental freedoms. Indeed, the Act prohibits any conduct that is likely to interfere with the exercise of an individual's rights under the Act. Anyone who engages in conduct prohibited by the Act commits an unfair labour practice.

If a group of employees wants to be represented by a union, the Act provides the means for that union to be legally recognized as the exclusive bargaining agent for those employees. This recognition is called certification and carries with it certain rights and obligations. The union acquires the right to bargain with the employer on behalf of the employees it represents (the bargaining unit) and to bind them to a collective agreement setting out the terms and conditions of

their employment. In return for that right, a union has the duty to fairly represent all of the employees in the bargaining unit, whether or not they are members of the union.

Even where a union has not sought certification under the Act, an employer may agree to acknowledge the union as bargaining agent for the employees and to conclude a collective agreement with the union. This is called voluntary recognition. In such cases the union will normally be able to enforce the same rights and will be subject to the same obligations under the Act as a certified union.

The Act governs most aspects of the relationship between unions and employers. It contains provisions designed to promote collective bargaining and sets out certain basic standards for every collective agreement. If the union and the employer are unable to reach an agreement, the Act permits strikes, lockouts and picketing (within certain legal constraints) in order to enforce bargaining demands. However, the Act prohibits strikes and lockouts during the term of a collective agreement. All disputes arising during the term of a collective agreement must be resolved, without a work stoppage, by arbitration or some other method agreed to by the parties. The Act provides assistance to the parties to resolve both mid-contract and collective bargaining disputes.

Not everyone is covered by the provisions of the Industrial Relations Act. Only those who meet the Act's definition of an employee are entitled to exercise collective bargaining rights under the Act. Accordingly, under the Act, persons referred to in the following list are not considered to be employees:

- anyone who is employed as a manager and who exercises the functions of a manager or superintendent in the direction or control of employees. The purpose of this exclusion is to avoid a conflict between a person's job duties and his or her involvement in a union;
- anyone employed in a confidential planning or advisory position in the development of management policy for the employer. This includes someone whose main interests lie with the employer and not the employees, although he or she may not exercise traditional management functions; or

- anyone employed in a confidential capacity in matters related to labour relations or personnel. Once again, this exclusion is designed to prevent a conflict of interest between a person's union membership and his or her responsibilities to the employer.

Certain groups are also specifically excluded from bargaining collectively under other legislation (eg. Public Service Labour Relations Act, School Act). This is generally to avoid situations where union membership would create a conflict with job responsibilities.

Dependent contractors and supervisors are not excluded from the application of the Act. A dependent contractor is someone who performs work or services under contract to another person under such terms and conditions that he or she is in a position of economic dependence on that person. A dependent contractor's position more closely resembles that of an employee than that of an independent contractor.

Before January 1988, teachers were not considered employees for the purposes of the Industrial Relations Act. Amendments to the Industrial Relations Act and the School Act gave teachers the right to join unions and bargain collectively. They also have the option of forming associations to bargain collectively under the School Act rather than under the Industrial Relations Act.

If any question arises concerning whether or not a person has employee status under the Act, the Industrial Relations Council makes the final decision. The person's job title is not necessarily a deciding factor. The Council makes these decisions on a case by case basis and looks at what the person actually does in relation to the employer's business operations.

There are some employees in British Columbia who are not covered by the Industrial Relations Act because they come within federal jurisdiction. Canada's Constitution distributes most of the power affecting labour relations to the provincial governments. For that reason, most employers in British Columbia, and their employees, come within the scope of the Act. The federal government, however, retains labour relations jurisdiction over employees who work in certain industrial

sectors. Some examples of employees who come under federal jurisdiction are:

- employees of the federal public service and federal crown corporations;
- employees engaged in works or undertakings that connect a province with another province or country (eg. airlines, railroads and shipping);
- employees of chartered banks;
- employees in radio and television broadcasting; and
- employees in the grain industry.

Collective bargaining rights for these employees are governed by the Canada Labour Code.

Chapter 2
Industrial Relations Council

The Industrial Relations Council is an independent body established under the Industrial Relations Act with the authority to administer the Act's provisions. It is the Council's responsibility to decide all matters covered by the Act. In making these decisions, the Council must keep in mind certain general purposes and objectives set out in Section 27:

- to secure and maintain industrial peace;
- to further harmonious relations between employers and employees;
- to improve the practices and procedures of collective bargaining between employers and unions;
- to promote conditions favourable to the orderly and constructive settlement of disputes between employers and employees or their freely chosen union;
- to encourage the voluntary resolution of collective bargaining disputes;
- to minimize the harmful effects of labour disputes on persons who are not involved in the disputes;
- to provide assistance to employers and unions negotiating or renewing collective agreements; and
- to gather and publish information and statistics respecting collective bargaining in the Province.

In attempting to achieve these aims, the Council must consider the public interest and the rights of individuals as well as the interests of the parties directly affected by its decisions. The

Act also requires the Council to exercise its powers and perform its duties so as to resolve labour disputes without undue delay.

Jurisdiction

The Council is the final decision-maker on any question that arises under the Act. Some of the matters the Council has jurisdiction to decide are listed in Section 34 of the Act. These include questions concerning whether:

- a person is an employer or employee;
- an organization is a union;
- a collective agreement has been entered into;
- a group of employees is a unit appropriate for collective bargaining;
- a person is a member in good standing of a union;
- a person is included in or excluded from a bargaining unit; and
- an activity constitutes a strike, lockout or picketing.

This is not a complete list of the powers exercised by the Council but it shows that the Legislature has given the Council the power to decide the vast majority of matters that can arise in labour relations.

The Council is also responsible for administering several other Acts, the most important of which is the Public Service Labour Relations Act. The PSLRA regulates collective bargaining between the provincial government as employer and the unions representing its employees. It contains special provisions dealing with the structure of bargaining units and the form of collective agreements in the provincial public service.

Structure and Composition

The head of the Industrial Relations Council is called the Commissioner. The Council also consists of the chairmen of its two divisions, a number of vice-chairmen and an equal number of representatives of both employers and unions who are called

members. The Commissioner, vice-chairmen and members are all appointed by the Lieutenant Governor in Council (i.e. the provincial Cabinet). The chairmen are designated by the Commissioner from among the vice-chairmen.

A panel appointed by the Commissioner of the Council to hear a case under the Act usually consists of a chairman or vice-chairman, one representative (member) from the employer community and one from the labour community. A panel may also consist of:

- the Commissioner, a chairman or a vice-chairman sitting alone;
- the Commissioner or a chairman plus two or more vice-chairmen (or members); or
- three or more vice-chairmen (with or without members).

No panel can be constituted consisting only of members.

The Council has two divisions, the Industrial Relations Adjudication Division and the Disputes Resolution Division, each headed by a chairman designated by the Commissioner from among the vice-chairmen of the Council. Another vice-chairman is designated the Registrar of the Council. Applications and complaints to the Council are addressed to the Registrar.

The Industrial Relations Adjudication Division performs the functions previously performed by the Labour Relations Board. It investigates and resolves complaints and applications under the Act, generally by conducting a hearing at which all parties affected by the complaint or dispute may present their case. The adjudication panel makes a decision which is binding on the parties and can order a particular remedy such as directing a party to do (or to refrain from doing) a certain act or to make a monetary payment.

The Disputes Resolution Division incorporates the functions previously performed by the Mediation Services Branch of the Ministry of Labour and Consumer Services. Among its specific duties are:

- monitoring collective bargaining in the Province;

- providing assistance to employers and unions negotiating or renewing collective agreements;
- gathering and publishing information and statistics on employment, labour relations and collective bargaining; and
- providing mediation services.

Powers

In order for the Council to conduct an effective investigation into complaints under the Act, it has been granted a number of powers by the Legislature. The general powers of the Council are set out in Section 35 and include the following:

- to summon witnesses and compel them to give evidence under oath and produce any documents the Council considers necessary;
- to enter any workplace during working hours to inspect those premises and question any person regarding them;
- to order votes to be conducted to ascertain the wishes of employees or employers in relation to proceedings under the Act;
- to delegate the task of investigation to any person;
- to add parties to proceedings at any stage of the proceedings; and
- to abridge or extend the time for instituting any proceeding under the Act.

The Council frequently delegates the task of investigation to an Industrial Relations Officer from the Ministry of Labour and Consumer Services who then files a report of his or her findings with the Council. The Council also gives all parties full opportunity to present evidence and make submissions on a matter before it. The Council is not limited to accepting only evidence that would be admissible in a court of law and it has the authority to determine its own procedure for hearing and investigating complaints.

The Council publishes regulations concerning its own administrative procedures entitled the Industrial Relations

(Practice and Procedure) Regulation, more commonly referred to as the "Industrial Relations Council Rules". The Rules made by the Council must be approved by the Minister of Labour. The Council also occasionally publishes policy statements concerning the interpretation and administration of specific sections of the Act. These "procedural memoranda" provide clear and specific guidelines for the labour relations community.

Remedial Authority

The Council has a wide range of remedies available to it. In most cases, the source of the Council's authority to grant a remedy is Section 28 of the Act. Should the situation under consideration constitute an unfair labour practice, further authority is provided in Section 8. If the Council finds that the Act has been violated, it can order the person violating the Act to, among other things:

- refrain from continuing the breach of the Act (this order is generally referred to as a cease and desist order); and
- rectify the contravention of the Act by the payment of money or perhaps reinstatement of an employee who has been discharged in violation of the Act.

The Council may also:

- determine the value of an injury or loss resulting from a violation of the Act and order the violator to pay that money; and
- make any other order the Council considers appropriate.

The Council also has the discretion to refuse to make an order if it feels it is proper to do so.

A refusal to carry out an order made by the Council under the Act may result in the filing of that order in the Supreme Court of British Columbia. Once the order is filed it has the same force and effect and is enforceable in the same manner as an order of the Supreme Court.

Filing an Application or Complaint

The Industrial Relations (Practice and Procedure) Regulation (also referred to as the "Industrial Relations Council Rules")

requires that every proceeding before the Council be commenced by the filing of an application or complaint in writing. This application or complaint should outline the nature of the case and the remedy that is being requested from the Council. In some instances, the Rules specify the form to be used when filing an application or complaint. These forms are available at the Council's offices upon request.

Once an application or complaint is received, the Council will make sure that all parties affected are notified and invited to make submissions. The time limits within which submissions must be received are set out in the Industrial Relations Council Rules. Extensions are generally granted only in limited circumstances.

The Council will generally appoint an Industrial Relations Officer to investigate the application or complaint. Once the officer has completed the investigation, a detailed report is filed with the Council. Since the Council may make its decision on the basis of the submissions of the parties and the officer's report, that report is a valuable tool in the Council's decision-making process. For that reason, the cooperation of the parties in providing the officer with all relevant information is of great assistance to the Council in the resolution of disputes.

Applications to the Council frequently result in the parties reaching a voluntary settlement. In fact, the Council prefers to assist the parties in settling their own disputes rather than to impose a settlement.

There is no requirement that the Council hold a hearing before making a decision. However, if the Council feels that a hearing is necessary, it will notify all parties concerned of the time and place for the hearing. Hearings are usually held at the Council's offices in Vancouver but, for the sake of convenience, a hearing may be held in some other location closer to the dispute. If someone who has been given notice of the hearing fails to attend, the Council may proceed with the hearing in the absence of that person.

Once the Council has reached its decision, it may inform the parties of that decision by letter but in most cases it will

provide them with a formal written decision containing detailed reasons for its ruling.

Reconsideration

If a party to a decision believes that the Council is mistaken, the party may request the Council to reconsider its decision. However, the grounds on which a reconsideration will be granted are fairly narrow. One of the purposes of a reconsideration is to ensure that different Council panels properly interpret the Industrial Relations Act and consistently apply the principles developed by the Council. An application for reconsideration must be received by the Council within 15 working days of the publication of the original decision and must set out in full the grounds for making the application.

Role of the Minister of Labour

The Minister of Labour has an important role under the Industrial Relations Act. For example, if the Minister believes that a collective bargaining dispute threatens the economy of the Province, or the health, safety or welfare of its residents or the provision of educational services, he may:

- order a cooling off period of up to 40 days during which no strike or lockout may occur;
- direct the Council to designate services as essential, which means that the employer is required to provide those services and the union is required to allow its members to provide those services in the event of a strike or lockout.

The Minister also has the authority to:

- appoint an Industrial Inquiry Commission to "maintain and secure industrial peace and promote conditions favourable to the settlement of disputes";
- direct the Council to consider whether a council of unions would be an appropriate bargaining agent for the purposes of bargaining with an employer or an employers' organization;
- appoint an arbitrator to hear a dispute if the parties to a collective agreement cannot agree to one; and

- insert a provision into a collective agreement to deal with the effect of technological change.

Aside from his specific responsibilities and authority under the Industrial Relations Act, the Minister is responsible for initiating legislation concerning labour relations and collective bargaining. Research and policy analysis regarding such legislation is conducted by Ministry staff. The policy recommendations formulated by the Ministry are introduced into the Legislature by the Minister in the form of a Bill for debate and possible amendment by the Members of the Legislative Assembly. Once approved by the Legislature, the Bill becomes an Act which in turn becomes law when it is signed and proclaimed by the Lieutenant Governor.

The Legislature has established the legislative framework for labour relations and collective bargaining in the Province through the Industrial Relations Act. It is the role of the Industrial Relations Council to interpret and administer the legislative policy enacted by the Legislature.

Although it is independent from the Ministry and from Government, the Council is required under the Industrial Relations Act to provide an annual report of its activities to the Minister. The Council's annual report is tabled before the Legislature in the same manner as the annual reports of the various Ministries.

Chapter 3
Unfair Labour Practices

To ensure that employees can effectively exercise their right to be members of a union, the Act prohibits any conduct by employers, unions or other organizations or persons that might interfere with that freedom. Anyone who engages in conduct prohibited by the Act is said to have committed an unfair labour practice.

Section 3 of the Act prohibits an employer from:

- participating in or interfering with the formation or administration of a union;
- discharging, suspending, transferring or laying off an employee because the employee seeks to exercise his or her right to be a member of a union;
- imposing any condition in a contract of employment that attempts to restrain an employee from exercising his or her rights under the Act; and
- threatening a penalty or promising a benefit in order to compel an employee to refrain from becoming, or continuing to be, a member of a union.

If an employer discharges, suspends, transfers, lays off or otherwise disciplines an employee during a union certification drive, it is up to that employer to prove that the action was not motivated by anti-union sentiment.

Unless an employer's actions are intended (even in part) to interfere with an employee's rights under the Act, the employer is not prohibited from:

- suspending, transferring, laying off or discharging an employee for proper cause;

- communicating to employees any fact or opinion reasonably held concerning the business; or
- making any change in the operation of the business that is reasonably necessary for the proper conduct of the business.

Section 2(3) makes clear that nothing in the Act is intended to deprive a person of his freedom to express his views provided that he does not use undue influence, intimidation, coercion or threats. Whether a statement by an employer, a trade union representative or any other person constitutes an unfair labour practice depends on what was said, to whom and in what context or circumstances.

Sections 5 and 5.1 require that trade unions impose only fair and reasonable conditions of membership and do not engage in discriminatory practices in regard to union membership. A union can suspend, expel or impose a penalty on a union member, or refuse membership in the union to a non-member, only for a fair and reasonable cause. For instance, refusing to participate in an illegal strike is not a fair and reasonable cause for a union to discipline its members. When an employee is expelled from or denied membership in a union and the collective agreement in force between the employer and the union requires all employees to be members of the union, the union cannot insist that the employee be dismissed unless the employee was expelled or denied membership because the employee:

- has refused to pay union dues; or
- has done something against the union which is contrary to the Industrial Relations Act.

Union initiation fees, dues or assessments must not be unreasonable or discriminatory. For example, a union cannot threaten to impose a greater initiation fee or union dues after it becomes certified in order to compel an employee to join the union during a certification campaign.

Furthermore, a union commits an unfair labour practice if it tries to organize employees at the employer's place of business during working hours without the employer's consent.

If an employee believes that he or she has been the subject of an unfair labour practice, a complaint can be made to the

Council. The Council will invite all interested parties to make submissions and will appoint an Industrial Relations Officer to investigate the matter.

If the reason for the complaint is that an employee has lost his or her job, the parties can expect that the officer will proceed quickly with the investigation. The officer will contact the parties and look into the circumstances giving rise to the complaint. Sometimes, the officer's involvement will result in a settlement of the complaint. Once the investigation is completed, the officer files a report with the Council.

If, after inquiry into the matter, the Council finds that an unfair labour practice has been committed, it may order a remedy along the lines discussed in the previous chapter.

In some cases a discharged employee is not protected by a collective agreement which requires that the employer have just cause for discipline and provides a grievance and arbitration procedure for an unjustly discharged employee to claim reinstatement with compensation for lost wages. This is the case when a union is attempting to gain certification or to negotiate a first collective agreement. In these cases, where an employee alleges that he or she has been fired for exercising a right provided by the Act, the Act requires the Council to investigate and hold a hearing within five days of the filing of the complaint and to make a decision on the complaint within five days of the hearing.

This is not a complete summary of the unfair labour practice provisions contained in the Act. For example, failure by a union to represent the employees in the unit in a fair and lawful manner or failure by either a union or an employer to negotiate in good faith in attempting to reach a collective agreement, are also considered to be unfair labour practices. These unfair labour practices are discussed in greater detail later in this Guide.

Chapter 4
Certification Process

Instead of dealing individually with their employer, a group of employees may decide they want a union to represent them. The Act provides the means for that union to be recognized as the exclusive bargaining agent of those employees. This recognition is called certification.

Joining a Union

Usually a group of employees who want union representation will contact an established union; however, employees are free to form their own union. A union is defined as an organization or association of employees whose purposes include the regulation of relations between employees and their employers through collective bargaining. The Act requires that a union be local or provincial in character; however, this may include local branches of national or international unions. A union must be viable for collective bargaining — it must be capable of carrying out its responsibilities as bargaining agent for employees.

In order to fairly represent employees, the association or organization must be free from employer control or influence. It must also comply with the provisions of the Human Rights Act of British Columbia — i.e., it must not exclude or otherwise discriminate against individuals on grounds of sex, race, religion, colour, age, marital status, ancestry, place of origin, political belief or a criminal conviction unrelated to employment activities. If the Council finds either employer domination or discrimination contrary to the Human Rights Act, it cannot certify the organization or association of employees under the Act.

Applying for Certification

In order to apply for certification, a union must be able to demonstrate that it has 45 percent of the employees in the proposed bargaining unit as members in good standing . Membership in good standing means that an employee has paid an initiation fee and signed an application for membership in the union.

Upon receiving the union's application for certification, the Council advises the employer that the application is pending. The employer is then required to notify all affected employees by posting a notice of the application in a conspicuous location on the employer's premises. While an application for certification is pending, an employer is not permitted to alter the wages or any other term or condition of employment of the employees affected by the application without the consent of the Council.

At the same time, the Council appoints an Industrial Relations Officer to investigate the accuracy of the information contained in the union's application. The officer's first task will be to contact the employer to secure a list of all employees in the unit on the date the Council received the union's application. This information is usually obtained by examining the employer's payroll records for that date. The officer will then contact the union in order to determine which employees were members in good standing of the union on the date the application was received by the Council. The officer will ask to see a signed application for membership and a receipt for the payment of the initiation fee for each employee the union claims as a member.

Once the investigation is complete, the officer files a detailed report with the Council. The Council will not, under any circumstances, disclose the names of the employees supporting a union's application for certification. All information contained in the Industrial Relations Officer's report is confidential and copies of the report are not available to either the union or the employer.

All interested parties are invited to make submissions to the Council with respect to the application. Normally the Council

will either grant or deny a certification application on the basis of the officer's report, the submissions of the parties and a representation vote. Whether or not a representation vote will be conducted is determined at a special hearing. The hearing panel will order a vote only if it is satisfied that:

- the applicant is a trade union within the meaning of the Act;
- the proposed unit is appropriate for collective bargaining; and
- the applicant has as members in good standing not less than 45 percent of the employees in the unit.

A further hearing may be conducted at a later date if the certification application is accompanied by unfair labour practice complaints or by a dispute about which employees are included in the bargaining unit.

Appropriate Bargaining Unit

When a union applies to be certified, it is applying to represent a specific group of employees. The Council must decide whether that group of employees is appropriate for collective bargaining purposes. In order to make that determination, the Council must specify which employees should be covered by the certification. This is called the determination of the appropriate bargaining unit. The Council has exclusive authority to make that determination.

The Council must determine the appropriate bargaining unit before it can decide whether or not the union has the support of a majority of the employees in that unit. In seeking to determine whether a group of employees is appropriate for collective bargaining, the Council will consider a number of factors, including:

- administrative efficiency and convenience in bargaining;
- lateral mobility of employees;
- desirability of a common framework of employment conditions for similar work situations;
- industrial stability;

- historical representation patterns;
- the nature of the industry; and
- geographical considerations.

Where practicable, the Council prefers large bargaining units to small or fragmented groups. However, smaller units will be permitted if appropriate.

Requisite Employee Support

As already indicated, certification will be granted only if a sufficient number of the employees in the appropriate bargaining unit want union representation. Under the Act, the wishes of the employees are demonstrated:

- by having the union submit evidence that enough of the employees in the appropriate unit are members in good standing of the union; and
- by a representation vote.

If less than 45 percent of the employees in the bargaining unit are members of the union when the union applies for certification, the application is dismissed. If the union's membership evidence discloses that at least 45 percent of the employees are members in good standing at the time of application for certification, then the Council will order that a representation vote be taken. Unless the balloting is conducted by mail, the representation vote must be held within 10 days of the date of application for certification. This short time frame minimizes the possibility of undue influence from the employer or the union.

The procedure for representation votes is set out in the Industrial Relations (Voting) Regulation. The Council appoints a returning officer to supervise the vote. Both the union and the employer are entitled to appoint a scrutineer to be present when the vote is conducted. Where the representation vote concerns an application by employees for cancellation of a certification (i.e. decertification application), the applicant employees may also appoint a scrutineer.

The returning officer will establish the voter's list after reviewing the employer's payroll records and, if necessary,

consulting with the union. The returning officer will advise the parties of the time and place of the vote which may be held at the employer's premises during working hours. All persons who are employees in the bargaining unit both on the date of application for certification and the date the vote is held are entitled to vote.

All votes are conducted by secret ballot. If there is any dispute as to the eligibility of an employee to vote, the employee in question will be permitted to cast a ballot. That ballot, however, will be kept separately in a sealed envelope and the ballot box will also be sealed pending the Council's decision about that employee's eligibility. Once all questions of eligibility have been determined, the ballots will be counted.

In order for a union to be certified, a majority of the employees who vote must favour representation by the union. If the union does not secure majority support, its application will be dismissed.

Certification Without a Vote

There are two instances in which the Council can grant a union certification without conducting a representation vote. The first is where the Council is of the opinion that a representation vote is unlikely to disclose the true wishes of the employees because of an unfair labour practice by the employer.

The second case is in the construction industry. When a union makes application for certification for employees on a construction project and has at least 55 percent of the employees in the appropriate unit as members in good standing, the Council can grant certification without conducting a representation vote. However, a certification granted in this manner is in effect only until the construction project is completed.

Effect of Certification

Once the Council issues a certification, the union becomes the exclusive bargaining agent on behalf of employees in the bargaining unit, whether or not the employee is a member of the union. The employer is not entitled to bypass the union

and negotiate separate and individual contracts of employment with any of the employees in the bargaining unit.

Duty of Fair Representation

The right of a union to be the exclusive bargaining agent on behalf of the employees it represents carries with it the duty to represent every employee in the bargaining unit in a fair and lawful manner, whether or not the employee is a member of the union. A union cannot act in bad faith or in an arbitrary or discriminatory fashion in the representation of an employee. This duty applies both in the course of negotiations and in the administration of the collective agreement.

Similarly, an employers' organization cannot act in bad faith or in an arbitrary or discriminatory manner in representing its member employers and must carry out its functions in a fair and lawful manner.

Any person who considers that a union or employers' organization is breaching or is about to breach its duty of fair representation may apply to the Council for a remedy.

Teacher Bargaining

In the past, teachers in the public schools were excluded from the Industrial Relations Act definition of employee. This meant that they did not have the right to form or join a union to represent them in collective bargaining. They were represented by the B.C. Teachers' Federation (the School Act required every teacher to be a member of the B.C.T.F.) but the Teachers' Federation was not a union and the teachers did not have the right to strike.

By amendment effective January 1, 1988, teachers came within the Industrial Relations Act and now can form or join unions and engage in full collective bargaining under the Act (which also gives them the right to strike and their employers the right to lockout). An amendment to the School Act also gives teachers the option of forming an association to bargain under the provisions of the School Act. Such associations do not have the right to strike but the School Act provides a procedure for binding arbitration to settle disputes over salaries and bonuses.

In each school district, teachers must choose whether to be represented by an association or a union. If the majority of the teachers in an association vote to become a union, they can follow the normal procedure under the Industrial Relations Act to gain certification which gives the union exclusive authority to represent every teacher in the school district. On the other hand, if a majority of teachers in a school district prefer to be represented by an association, the School Act gives the association the authority to bargain on behalf of every teacher in the school district.

Chapter 5
Collective Bargaining and Disputes Resolution

After a union is certified, it is entitled to engage in collective bargaining on behalf of the employees it represents. In most cases the end result of this bargaining will be a collective agreement, which is a contract between the union and the employer concerning the terms and conditions of employment for the employees in the bargaining unit. A collective agreement is a legally enforceable document which is binding on all parties involved.

In order to make the bargaining process more efficient, the Act sets out certain procedures that must be followed.

Bargaining Procedures and Requirements

Collective bargaining is initiated when either the union or the employer serves the other party with a notice in writing to commence bargaining. Once such a notice has been served, the employer is not entitled to increase or decrease the rates of pay of employees or to alter any other term or condition of their employment until four months after certification or until a collective agreement is executed, whichever occurs first. If the parties are bargaining to renew an existing agreement, notice can be served only when four months or less are left in the term of the agreement then in force. However, should neither party to the agreement serve notice to commence bargaining, then the Act provides that the notice is deemed to have been given 90 days prior to expiry of the agreement.

Once a notice to commence bargaining has been served, the union and the employer must begin "good faith" bargaining within 10 days. The requirement for good faith bargaining

generally means that both parties must be sincere in their attempts to reach an agreement. This includes making every reasonable effort to conclude an agreement. The bargaining process usually calls for a certain amount of give and take regarding the terms and conditions of employment. Failure to agree with the other side's bargaining demands does not, in itself, mean that a party is not bargaining in good faith but a deliberate strategy by either party to prevent reaching an agreement is considered to be bad faith bargaining. If one party engages in that kind of conduct, the other may lodge an unfair labour practice complaint with the Industrial Relations Council.

Disputes Resolution

If a union and an employer are unable to reach an agreement, they may resort to a strike or lockout to compel the other party to agree to the terms and conditions of employment which they are attempting to negotiate. The Disputes Resolution Division of the Industrial Relations Council monitors collective bargaining and ensures that strikes or lockouts are conducted in accordance with the Act.

However, the Disputes Resolution Division was also created to provide a much broader and more important service: to provide assistance to employers and unions to help them conclude collective agreements. The alternatives for such assistance have been widened from those previously provided by the Mediation Services Branch. Most of them are available at the request of the parties but some may be used on the initiative of the Commissioner of the Industrial Relations Council or the Minister of Labour, particularly where the dispute is having a serious impact on the public interest.

Strikes and lockouts are still available to parties who can't reach agreement at the bargaining table but the Act provides a number of other alternatives.

Mediation Services

When the parties are having difficulty concluding a collective agreement, they may decide to involve a neutral third party to assist them. Either party can apply to the Chairman of the

Disputes Resolution Division to appoint a mediation officer to help them reach an agreement.

The Commissioner of the Industrial Relations Council may also refer a dispute to the Chairman for the appointment of a mediator. In some cases the Commissioner may himself confer with the parties and make recommendations to them as to how to resolve their dispute.

Strikes and lockouts are not legal while a mediation officer is involved. The parties must wait until 48 hours after they have been advised by the Chairman that he has received the mediator's report before they can legally engage in a strike or lockout.

Imposing a First Contract

The Act anticipates that, in some instances, parties negotiating their first collective agreement may experience more difficulties than unions and employers with a longer history of bargaining. For example, if one of the parties to a bargaining relationship adamantly refuses to bargain in good faith, then the other party may request the Commissioner to constitute a panel of the Council to inquire into the dispute and, if the Commissioner considers it advisable, to impose a first agreement on both parties.

The panel will consist of three persons, two of whom need not be members of the Council but who may have particular knowledge and experience regarding the dispute and/or the industry in which the parties operate. The panel will attempt to assist the parties to reach a voluntary agreement. If this is not possible, then the panel may settle the terms and conditions of employment for the parties. A contract settled in this way is binding on the parties but cannot be for a term longer than one year.

Fact Finding

The Commissioner has the authority to appoint a fact finder in any collective bargaining dispute. The duty of the fact finder is to confer with the parties to determine which matters have been agreed to by the parties and which matters remain in dispute.

The fact finder must report back to the Chairman of the Disputes Resolution Division within 20 days of his appointment. His report may include any matter which he considers relevant to the settlement of a collective agreement but is not binding on the parties. The Chairman determines whether or not the report should be made public.

Public Interest Inquiry Board (PIIB)

Where he considers it appropriate to do so, the Commissioner can appoint a Public Interest Inquiry Board to inquire into a dispute and attempt to reach a settlement. The PIIB must consider the interests of the public which are likely to be affected by the dispute and may hear submissions from the public as well as from the disputing parties. The Commissioner may also appoint a neutral person, called a "public interest advocate", to represent the public interest at the inquiry. The PIIB is a more visible form of mediation where the public interest is given important consideration as well as the interests of the parties directly involved in the dispute.

If the PIIB is unable to settle the dispute within 30 days, it must report to the Commissioner with recommendations for reaching an agreement. The recommendations must have due regard for the public interest and, if the dispute is in the public sector, for the employer's ability to pay.

If the parties accept the PIIB recommendations, they are binding and must be included in the terms of their collective agreement. If either or both of the parties fail to respond to the recommendations within 10 days, the Commissioner may order a vote on whether the recommendations should be accepted or rejected. If the employees and the employer(s) affected by the dispute vote in favour of accepting the recommendations, they are binding and must be included in the collective agreement.

Last Offer Vote

Before a strike or lockout commences, the employer can request that a vote of the employees in the bargaining unit be conducted on the employer's offer last received by the union at bargaining. Similarly, a union bargaining with a group of

employers represented by an employers' organization can request a vote of member employers on the union's last offer. In both cases, where the vote favours acceptance of the offer, an agreement is in force between the parties based on the terms of the offer voted upon.

After a strike or lockout has commenced, the Commissioner can order a vote on the last offer of either party where he considers it in the public interest to do so. Again, a vote in favour of the last offer is binding.

Cooling off Period and Essential Services

Where the Minister of Labour considers that a collective bargaining dispute threatens the economy of the Province, or the health, safety or welfare of its residents or the provision of educational services, he may:

- order a cooling off period of up to 40 days during which no strike or lockout may occur.
- direct the Council to designate essential services.

Services can be designated as essential if the Council considers them necessary or essential to prevent immediate and serious danger to the economy of the Province or to the health, safety or welfare of its residents or to the provision of educational services.

When the Council designates services as essential, the employer is required to provide those services and the union is required to allow its members to perform (and designated employees are required to perform) those services in the event of a strike or lockout. Employees who are members of a union which is not involved in the dispute can also be required to provide essential services. For example, where health care workers belonging to one union are striking a hospital or long term care facility, members of a different union at the same facility can be required by the Council to perform essential services.

When a cooling off period is ordered and/or essential services are designated, the Commissioner gives notice to the parties. The employer must resume operations as required by the order

or designation and affected employees must return to work. Refusal by employees to return to work can be cause for disciplinary action by the employer. To safeguard against unreasonable discipline, employees may grieve such discipline under the terms of their collective agreement.

Intervention by the Legislature

The Parliament of Canada and the Legislatures of every province have the power to enact special legislation to end labour disputes within their jurisdiction. Such legislation generally orders an immediate end to the dispute and orders that a particular method be used to resolve the differences between the parties and to conclude a collective agreement (with or without the agreement of the parties). Since the legislation is specifically enacted to end a particular dispute by a particular means, it is often referred to as "ad hoc" legislation.

To replace the ad hoc approach to "back to work" legislation, the Industrial Relations Reform Act (which amended the Labour Code to create the Industrial Relations Act) included provisions which allowed the Legislature to order the Commissioner of the Industrial Relations Council to resolve a dispute by using the range of powers provided for in the legislation. If the Legislature was not in session and the Cabinet considered that the dispute posed a threat to the economy of the Province or to the health, safety or welfare of British Columbians or to educational services, the Cabinet could order the Commissioner to end the dispute.

Where the Commissioner was ordered to end a dispute he would immediately prohibit a strike or lockout. If a strike or lockout had already begun, he would order the parties back to work.

To resolve the dispute, the Commissioner would have the powers described earlier plus the authority to order an arbitrated settlement without the consent of the parties or to appoint a special mediator. An arbitrator could be directed to use a particular method of arbitration (such as mediation/arbitration or final offer selection) and would impose a settlement based on the submissions of the parties. If a special

mediator was appointed and was unable to persuade the parties to agree to terms, he would submit a report to the Commissioner in the form of a collective agreement which would be binding on the parties (except to the extent they agreed to vary its terms).

Any collective agreement imposed on the parties as a result of intervention ordered by the Legislature or the Cabinet would be brought before the Legislature. The Legislature would determine whether the collective agreement should be approved and confirmed or disallowed. If disallowed, it would cease to have effect or to be binding on the parties.

It is important to note that the sections of the Industrial Relations Reform Act which provided for intervention by the Legislature into collective bargaining were not brought into force with the rest of the Act. They are therefore not part of the Industrial Relations Act and cannot be applied. However, if a labour dispute arises which does require the Legislature to take action, these sections may be brought into force and become law.

Chapter 6
The Collective Agreement

A collective agreement is an agreement in writing between a union and an employer setting out the terms and conditions of employment including rates of pay and hours of work. There are certain basic standards that all agreements must meet. Over and above these statutory requirements, collective agreements generally deal with:

- overtime pay;
- statutory holidays;
- annual vacation;
- seniority provisions;
- layoff and recall procedures;
- grievance procedures;
- union security clauses; and
- health and welfare benefits.

The specific content of an agreement is left to the parties as long as their agreements do not conflict with laws related to matters such as minimum wages and payment of wages and as long as they contain the statutory provisions required by the Act.

Duration

The Act provides that every collective agreement shall be for a minimum term of one year, although the parties are free to agree to a longer term. During the life of an agreement, changes to any of its provisions can be made only with the consent of both the union and the employer.

Union Security Clauses

The Act permits the parties to include a clause in their agreement providing for membership in a specified union as a condition of employment or granting a preference for employment to members of a specified union. This is known as a union security clause. It comes in many forms including:

- closed shop — the employer agrees to hire only union members; in most cases this is done through the union hiring hall;
- union shop — every employee is required to become a member of the union within a specified period of time as a condition of continued employment; and
- Rand formula — although membership in the union is not required, every employee in the unit is required to pay union dues.

During the negotiation of a first agreement, an employer cannot refuse to include at least a Rand formula union security clause requiring all employees in the bargaining unit to pay regular union dues to the union. To refuse is considered an unfair labour practice.

Most agreements contain a clause requiring the employer to deduct regular union dues from each bargaining unit employee's wages and to forward the union dues to the union. This is referred to as a "union dues checkoff" clause. Before an employer can deduct union dues from an employee's wages, it must have a signed authorization from the employee. However, once the employer has received the written authorization, the Act requires the employer to deduct the dues and remit them to the union at least once a month.

Religious Conscience

Some employees, because of their religious convictions or beliefs, may object to joining a union or paying union dues. Where a collective agreement requires union membership, those employees may apply to the Council for an exemption. If the exemption is granted, the Council may require the employee to pay to a charitable organization agreed on by the

employee and the union an amount equivalent to the union dues and assessments paid by the other employees. If the employee and the union cannot agree on the charity to receive the payments, the Council will designate one.

An employee granted a religious conscience exemption is not entitled to participate in any votes held by the union or directed by the Council under the Act.

Statutory Inclusions

The Industrial Relations Act requires that certain provisions be contained in every agreement. For example, the Act prohibits strikes or lockouts during the term of a collective agreement and requires that every collective agreement include such a prohibition. If a collective agreement does not contain such a term, it is deemed to contain the following wording:

"There shall be no strikes or lockouts as long as this agreement continues to operate."

Because the Act prohibits all work stoppages during the life of an agreement, an alternate method of resolving mid-contract disputes is required. The Act permits the parties to negotiate their own method for resolving disputes during the life of an agreement. Commonly, a grievance arbitration clause — with binding third-party adjudication as the final step — is included in the collective agreement. If the agreement does not provide for some method of resolving mid-contract disputes, the Act contains a provision for arbitration that is deemed to be included in the agreement.

Every collective agreement must contain a provision governing dismissal or discipline of an employee covered by the agreement and which requires the employer to have just and reasonable cause for dismissing or disciplining an employee. Again, if the collective agreement does not contain such a clause, the Act provision is deemed to be included.

Technological Change

The Act also requires that every agreement contain provisions for settling, without work stoppage, all disputes over the

impact of technological change during the life of the agreement. The purpose of this requirement is to ease the impact of technological innovations that affect the job security of employees while allowing the employer to introduce new developments aimed at increasing productivity.

Where a collective agreement does not contain provisions for adjustment to technological change, the Minister of Labour may appoint someone to investigate the matter and may order provisions for that purpose which are then deemed to be part of the collective agreement.

Usually arbitration is specified by the collective agreement as the method of final settlement of disputes relating to adjustment to technological change. If the arbitrator determines that the terms of the collective agreement are not sufficient to deal with the effects of the technological change, he may order the parties to bargain new terms. However, he must have the written approval of the Minister of Labour before doing so. The Act provides that the prohibition against mid-contract strikes and lockouts does not apply when the arbitrator has ordered the parties to commence collective bargaining in regard to technological change.

In addition to requiring collective agreement provisions relating to technological change, the Act also requires an employer to give the union at least 90 days notice of the introduction of technological change which is likely to affect the terms and conditions or security of employment of a significant number of employees in the bargaining unit. Where a collective agreement contains provisions intended to assist employees affected by technological change to adjust to the effects of the technological change, the parties may exclude the notice requirement from applying during the term of their agreement.

The Council and Grievance Arbitration

A grievance is a complaint under the terms of a collective agreement alleging that a party to that agreement has failed to abide by one of its terms. Normally, the agreement sets out a grievance procedure containing several steps. At each step in the procedure the parties attempt to resolve their

disagreement. If they are unable to do so, the agreement may provide for resort to third-party adjudication by a single arbitrator or an arbitration board. The arbitration board will consider the wording of the agreement and the evidence of the parties involved in the dispute and will then render a decision. Its decision is binding on all parties concerned.

The Industrial Relations Council has a limited involvement with grievance arbitration. Under Section 96(1) of the Industrial Relations Act, either party to the collective agreement can request that the Council appoint an officer to confer with the parties to help them settle their differences. The Council will normally make the appointment if the dispute between the parties arises from the collective agreement and if all of the steps in the grievance procedure prior to arbitration have been completed.

The officer appointed by the Council will contact the parties in order to discover the factual background to the dispute. The officer will also meet with the parties, either separately or together, and attempt to secure a settlement of the matter. If an application made under Section 96(1) concerns the discharge of an employee, the parties can expect that it will be dealt with as soon as possible.

If, despite the assistance of the officer, the parties are unable to settle their differences, the officer then submits a report to the Council. The Council may then:

- refer the matter back to the parties for arbitration; or
- inquire into the differences and make a final determination of the matter.

Grievances that involve factual disputes or that are of considerable significance to the parties are usually referred back to the arbitration process under the collective agreement. However, if the differences can be disposed of on the basis of the officer's report and the submissions of the parties, or if they raise a significant issue under the Industrial Relations Act, the Council may make the final determination itself. The parties to an agreement are free to agree in writing to exclude the application of Section 96(1) during the life of their agreement.

Disputes during the life of a collective agreement may also be resolved by a special officer appointed by the Minister of Labour. This appointment may be made in connection with any issue whether or not it is covered by the agreement.

The decisions of arbitration boards are subject to appeal only on limited grounds. Jurisdiction to hear appeals from the decisions of arbitrators is divided between the Council and the British Columbia Court of Appeal. The Council's power of review is limited to the following grounds:

- that a party to the arbitration was denied a fair hearing; or
- that the decision of an arbitration board is inconsistent with the Act or another labour relations statute.

The jurisdiction of the Court of Appeal is limited to issues of general law not falling under the jurisdiction of the Council.

Chapter 7
Strikes, Lockouts and Picketing

If a union and an employer are unable to reach agreement through the bargaining process, there are a number of options available to them. The two most frequently used are mediation and strikes or lockouts.

Although strikes and lockouts can be costly in terms of lost production and wages, they are permitted under the Act because they are generally regarded as an effective means of resolving collective bargaining disputes. Many people (including labour relations practitioners) feel it is important to maintain the option of strikes and lockouts in order to encourage good faith collective bargaining. It is argued that knowing that the other side can legally shut down operations provides an incentive for both parties to bargain realistically. Since the parties best understand the problems and priorities of their workplace, they can produce a more workable collective agreement on their own rather than with outside intervention or interference (although mediation is generally considered acceptable if it is agreed to by both parties). Proponents of this view point out that 95 percent of collective agreements in B.C. are concluded "voluntarily" with no strike or lockout.

The Act permits unions and employers to resort to strikes and lockouts but not without restrictions or without regard to the interests of the public and of persons not involved in the dispute. For instance, the Act regulates when and under what conditions strikes or lockouts can take place and, to some extent, how they are conducted. It also provides both legal alternatives to strikes and lockouts and the resources of the Disputes Resolution Division of the Industrial Relations Council to assist parties to resolve disputes without lengthy

and costly work stoppages. Where a collective bargaining dispute seriously threatens the public interest, the Act provides authority for intervention into the collective bargaining dispute. [See Chapter 5: Collective Bargaining and Dispute Resolution.]

Strikes and Lockouts

Generally speaking, a strike is a refusal to work by employees acting with a common purpose. In a legal strike that common purpose is to compel their employer to agree to terms and conditions of employment. A strike need not be a complete stoppage of work; for example, overtime bans and work slowdowns can constitute a strike. On the other hand, withdrawal of services by employees arising from a legitimate concern for their own safety or health or to enforce a non-affiliation clause in a construction industry collective agreement is not a strike.

Similarly, a lockout is a restriction by the employer of work that would normally be available for employees (generally by suspending work or closing the place of employment) and which is intended to compel those employees, or to aid another employer to compel employees, to agree to terms and conditions of employment.

The Act prohibits both strikes and lockouts during the life of a collective agreement (and every collective agreement must contain a clause which forbids "wildcat" strikes or lockouts). Any differences arising during its term must be settled through the grievance and arbitration procedures set out in the agreement. The Act also prohibits any term in a collective agreement which allows employees to honour boycotts on the goods or services of another employer (secondary boycott agreements).

Even if there is no collective agreement in force, certain legal preconditions must be satisfied before a strike or lockout can begin. These preconditions are:

- the union and the employer must first have engaged in collective bargaining;

- a vote must have been held to determine if the majority of voting employees favours a strike or, in the case of an employers' organization, if the majority of the voting employers in the organization favours a lockout; and
- strike or lockout notice must have been given; and if a mediation officer or fact finder has been appointed, the appointment must have formally come to an end.

As mentioned above, a strike or lockout vote must be held (after collective bargaining has taken place) before a strike or lockout is legal. In both cases, the vote is by secret ballot and all persons affected are entitled to vote. For instance, all employees in the bargaining unit can participate in a strike vote. The vote must be conducted in accordance with the Industrial Relations (Voting) Regulation. These regulations require that an observer appointed by the Council be present during the conduct of balloting and counting of votes.

A strike can be called only during the three months after the date of a favourable strike vote. If a strike is not called during that time, another vote must be held in order to renew the union's strike mandate. The same applies to lockout votes.

A union must give 72 hours written notice of its intention to strike to both the employer and the Industrial Relations Council before actually engaging in strike activity. Similarly, an employer must give 72 hours written notice of a lockout. In certain instances, as when perishable property is involved, the Council may lengthen the normal 72-hour period of strike or lockout notice.

Once the strike or lockout commences, the union or employer taking the action must immediately report to the Council the date the strike or lockout commenced. The Commissioner of the Council in turn is required to keep the Minister of Labour informed regarding strikes or lockouts that occur or are threatened.

Picketing

When a strike or lockout is in progress, the Act allows employees to picket. Picketing is a peaceful means by which

employees can increase the pressure on their employer to agree to terms and conditions of employment favourable to them. The purpose of the picket line is to persuade persons not to do work for, or do business with, the employer. A picket line, however, cannot be used to forcibly prevent persons from entering an employer's premises.

While a strike or lockout is in progress, employees are entitled to find work with other employers and an employer is entitled to keep on operating and to hire replacement workers while its employees are on strike or locked out as long as no use is made of professional strikebreakers. A professional strikebreaker is someone who is not a party to the dispute but whose primary objective is to prevent, interfere with or break up a lawful strike. A person providing the normal services of an employee is not a professional strikebreaker.

Striking or locked-out employees are entitled to picket where they perform, under the control and direction of the employer, work which is an integral and substantial part of the employer's operation. Other operations of the employer may not be picketed. For example, if the employer operates at more than one location, the striking or locked-out employees can picket only the location for which their union is certified and at which they perform their work.

With the permission of the Council, picketing may also be conducted at other sites (for example, where an employer attempts to have "struck work" performed away from its own premises). Striking or locked-out employees may also picket the place of business of an "ally" of their employer. An ally is a person who assists an employer in a lockout or in resisting a lawful strike. Ally picketing is restricted to the site at which the ally performs work for the benefit of the employer.

Where more than one employer carries on business at the same site (referred to as a "common site"), the Council must restrict picketing so that it affects only the employer involved in the labour dispute or the ally of that employer. This restriction on "common site" picketing also applies to separate and distinct operations of the same corporation or firm.

Only picketing that results from a legal strike or lockout is lawful under the Act. All other forms of picketing are prohibited. Decisions as to the legality or illegality of a strike, lockout or picketing are made by the Council. In most cases, when a complaint is filed, the Council will attempt to assist the parties in settling their differences. A formal hearing may be required, however, and if the Council determines that the strike, lockout or picketing is contrary to the Act, a formal order may be issued to restrain that conduct.

Chapter 8
Alterations in the Bargaining Structure

The Council receives many applications to change existing bargaining structures. Some of the changes sought are minor and can be accomplished by a simple alteration to the certification. For example, if an employer changes the name or address of its business operations, the union can apply to have its certification altered to reflect that change. Other changes are more substantive in nature and involve actual changes in the parties to the bargaining relationship. The means by which these changes most frequently occur are discussed below.

Raiding

The Act permits employees to change their bargaining agent. This can be done by joining another union. Once that union secures the support of a majority of the employees in the unit, it can apply to be certified in place of the original union. In order to minimize disruption at the work place, however, the Act does place some limitation on the time period during which a raiding union can apply to displace an incumbent union.

Once a union has been certified to represent the employees in a bargaining unit, the Act allows that union six months to attempt to reach an agreement with the employer. If no agreement is reached after the expiration of six months or such shorter time as the Council may agree to, another union is free to apply to be certified for the same unit. If, however, a collective agreement is in force, the Council will entertain applications for the same unit only during the seventh and eighth months in each year of the term of the agreement. Moreover, if a raiding application (whether successful or not) is made during the seventh or eighth month of a contract year, no

additional applications will be permitted in the following contract year.

When a union applies to displace another union and is able to demonstrate that its application is timely and that it has signed up a majority of the affected employees, the Council will conduct a vote to determine which of the unions the employees want to represent them.

Decertification

Just as employees can choose to be represented by a union, they can also choose to have their union's representation rights cancelled. If the Council receives an application to cancel the certification of a union which is signed by at least 45 percent of the employees in the bargaining unit, it will conduct a representation vote within 10 days of the application (the Council may allow a longer period if the vote is conducted by mail). However, such an application cannot be made within 10 months of the date of certification of the union.

If the majority of the ballots cast are against having the trade union represent the bargaining unit, the Council will cancel the certification and the union is not permitted to make another application to represent the bargaining unit until 10 months have elapsed. However, even where the vote goes against the union, the Council can refuse to cancel the certification where it considers that an unfair labour practice by any party has made it unlikely that the representation vote will indicate the true wishes of the employees. In that case the employees cannot make another decertification application within the next 10 months.

If the representation vote shows that the majority of the employees who vote wish to have the union continue to represent them, the Council will refuse the application and may designate a period of not less than 90 days that must elapse before the employees make another application to cancel their union's certification.

If no employees have been employed in the bargaining unit for at least two years, the employer may apply to have the union's certification cancelled. If the Council is satisfied that the

satisfied that the employer's conduct in the circumstances of the application has been fair and reasonable, it will cancel the certification.

The Council may also cancel the certification of a trade union any time after certification if it is satisfied that the union has ceased to be a union within the meaning of the Act or that an employer has ceased to be the employer of the employees in the bargaining unit. Similarly, application can be made to cancel the certification of a union that has abandoned its bargaining rights in respect of the employees in the bargaining unit.

Whenever the certification of a trade union is cancelled by the Council, the collective agreement between the union and the employer is void in regard to that bargaining unit. Also, if an employer has not employed any employees in a bargaining unit for two years, the collective agreement for that bargaining unit is automatically terminated. However, the union's certification will remain in force until the employer successfully applies to have it cancelled.

Council of Unions

The Act contains a provision for two or more unions to be designated as a single bargaining agent. The Council will consider creating such a council of unions on the direction of the Minister of Labour.

When a council of unions is formed, it becomes the exclusive bargaining agent for all employees previously represented by the individual unions. This does not mean the previous unions no longer have a role to play but, in the conduct of collective bargaining, they must act together under a constitution prepared by them or by the Council.

Successor Employers

When an employer disposes of its business or a substantial part of it, the employees do not lose the rights they have gained under the Act. All of those rights will operate in their relationship with the new employer (generally referred to as the "successor employer"). The union certification transfers

with the business and if a collective agreement is in force at the time of the disposition, then that agreement binds the new employer to the same extent as if the new employer had signed it.

In some cases, where a business is acquired to merge with an existing business, the new employer may already be bound by a certification and collective agreement with a different union. The Council may determine that it is appropriate to combine the two bargaining units into one. In such cases the Council must determine which certification and collective agreement will apply to all employees in the new bargaining unit. If one unit is substantially smaller than the other, the certification and collective agreement of the larger will normally apply. If not, the Council will conduct a representation vote of all employees in the new bargaining unit so that they may choose by majority vote which union will represent them and, consequently, which collective agreement will apply. In most cases the seniority lists of the two groups of employees will be combined into one by merging seniority based on length of service of each employee with his or her respective employer.

Associated Companies

The Council has the power to ensure that rights that employees have gained under the Act are not avoided or adversely affected by corporate shifts or alterations. If the Council is of the opinion that associated or related activities are carried on through more than one company and that those companies operate under the same control and direction, then the Council may declare and treat those companies as one employer for the purposes of the Act. The intent of such a declaration is usually the preservation of existing rights and obligations under existing certifications, accreditations and collective agreements.

Accredited Employers' Organizations

Employers are also entitled to band together for bargaining purposes. If a group of employers decides to seek accreditation under the Act, the result is the formation of a single bargaining agent to represent them. Like a council of unions, an accredited employers' organization will have a constitution.

Any employer member who wishes to withdraw from the organization may apply to the Council to be deleted from the accreditation. The Council will grant such an application if the employer:

- has been included in the accreditation for at least two years; and
- makes the application not less than nine months before the expiry date of all collective agreements entered into by the employers' organization on the employer's behalf.

Chapter 9
Unorganized Employees

The Industrial Relations Act is primarily concerned with regulating relations between employees who elect union representation and their employers. The provisions of the Act do not apply to the kinds of problems encountered by employees who deal individually with their employers.

The Employment Standards Act, however, establishes certain minimum standards of employment for all employees in the Province, whether or not they belong to a union. This Act is administered directly by the Ministry of Labour and Consumer Services (Employment Standards Branch), not by the Industrial Relations Council. The areas covered by this legislation include minimum wages, hours of work and overtime, annual and general holidays, notice of termination of employment, maternity leave and payment of wages. Certain provisions of the Employment Standards Act do not apply to employees whose collective agreements contain provisions covering the same subject matter.

If you have any questions about your rights and responsibilities as an employee or as an employer, you may contact the nearest office of the Employment Standards Branch of the Ministry of Labour and Consumer Services (address on pages 75-76) or the Government Agent in your area.

Appendix A
An Outline of the Industrial Relations Act

Section 1(1)	Definitions
	PART 1
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Appendix B
A Glossary of Labour Relations Terms

Ally: a person who assists an employer in a lockout or in resisting a lawful strike.

Arbitration: a method of settling a labour-management dispute by having an impartial third party conduct a hearing and render a decision that is binding on both the union and the employer.

Bargaining agent: a union certified by the Industrial Relations Council as agent to bargain collectively for employees in a bargaining unit; also a person or employers' organization accredited by the Industrial Relations Council and authorized by an employer to bargain on its behalf.

Bargaining unit: an employee group recognized by the Industrial Relations Council as the appropriate unit for collective bargaining.

Canada Labour Code: the statute regulating labour relations and collective bargaining for employees under federal jurisdiction.

Cease and desist order: an order by the Industrial Relations Council directing a party to refrain from doing something.

Certification: official recognition by the Industrial Relations Council that a union is the exclusive bargaining representative for employees in a particular bargaining unit.

Collective agreement: an agreement in writing between a union and an employer setting out the terms and

conditions of employment, including rates of pay and hours of work.

Collective bargaining: a method of determining wages, hours and other conditions of employment through direct negotiation between a union and an employer.

Company union: an employee association dominated by an employer.

Conditions of employment: rates of pay, hours of work, etc.

Consent order: an order by the Industrial Relations Council incorporating an agreement made by the parties.

Cooling off period: the period of time that must elapse before a strike or lockout may begin or resume.

Council of unions: an association of unions which bargain together on behalf of a number of bargaining units which have been amalgamated into one larger bargaining unit.

Decertification: cancellation by the Industrial Relations Council of a union's certification.

Disputes Resolution Division: the Division of the Industrial Relations Council primarily concerned with providing mediation services and other assistance to parties engaged in collective bargaining.

Duty of fair representation: the duty of a union or employers' organization to fairly represent its members.

Employer bargaining association (employers' organization): a bargaining association composed of more than one employer.

Good faith bargaining: bargaining in which the two parties make every reasonable effort to reach a collective agreement.

Grievance: a disagreement over the interpretation or application of a provision in a collective agreement; an allegation by one party that the other has disobeyed the terms of the agreement.

Grievance arbitration: settlement of a dispute over how a clause or article in a collective agreement should be interpreted and applied by having an impartial third party conduct a hearing and render a decision that is binding on both the union and the employer.

Industrial inquiry commission: a person or persons appointed by the Minister of Labour to investigate a dispute and make recommendations for its settlement.

Industrial Relations Act: the basic statute regulating labour relations and collective bargaining in B.C.

Industrial Relations Adjudication Division: the Division of the Industrial Relations Council which investigates and resolves complaints and applications under the Act, generally by conducting a hearing and making a binding decision.

Industrial Relations Council: the agency established under the Industrial Relations Act to administer and enforce the various provisions of the Act.

Industrial relations officer: an employee of the Ministry of Labour and Consumer Services appointed by the Industrial Relations Council to investigate disputes.

Interest arbitration: settlement of a collective bargaining dispute over what terms and conditions are to be included in a collective agreement by having an impartial third party conduct a hearing and render a decision that is binding on both the union and the employer.

Lieutenant Governor in Council: the Lieutenant Governor acting with the advice and consent of the Executive Council which is comprised of the Premier and all government ministers. (More commonly referred to as the provincial Cabinet)

Lockout: a restriction by an employer of work that would normally be available for the employees to perform and which is intended to compel those employees, or to aid another employer to compel employees, to agree to terms and conditions of employment.

Lockout notice: an announcement, in writing, given to the union and to the Industrial Relations Council by the employer, that it is the employer's intention to lock out employees.

Mediation: a method of settling collective bargaining disputes in which the parties to a dispute use a third person — called a mediator — as an intermediary.

Mediation officer: a person appointed by the Industrial Relations Council to act as a mediator.

Multi-union certification: certification of two or more unions as bargaining agent for a single bargaining unit.

Notice to bargain: a notice, served by either the union or employer to the other, to initiate collective bargaining.

Order: a ruling made by the Industrial Relations Council to correct a contravention of the Industrial Relations Act.

Perishable property: goods or commodities that are subject to imminent spoilage and that may soon become dangerous to life, health, other goods, commodities or property.

Picketing: a means by which employees attempt to increase pressure on their employer to agree to terms and conditions of work favourable to them; also, an attempt to persuade persons not to do work for, or do business with, the employer.

Professional strikebreaker: a person who is not a party involved in a dispute but whose primary object is to prevent, interfere with or break up a lawful strike.

Public Interest Inquiry Board: a form of mediation designed to ensure that the public interest is given consideration in attempting to resolve a collective bargaining dispute as well as the interests of the parties involved in the dispute.

Raid: an attempt by one union to gain the right to represent employees in a bargaining unit already represented by another union by persuading members of the other union to become its members.

Representation vote: a vote ordered by the Industrial Relations Council to determine whether employees in a bargaining unit want to have a particular union represent them as their bargaining agent.

Returning officer: a person who arranges and conducts a vote by either a union or an employer association.

Special mediator: a mediator appointed by the Commissioner with the authority to make a report in the form of a binding collective agreement. [*Note:* the provision for appointing a special mediator was not yet in force on the date of publication of this Guide.]

Special officer: a person appointed by the Minister of Labour to deal with disputes during the term of a collective agreement.

Strike: a refusal to work by employees acting with a common purpose.

Strike notice: an announcement, in writing, given to the employer and to the Industrial Relations Council by the union, that the employees will go out on strike.

Successorship: the preservation of bargaining rights of employees of a business through the automatic transfer of the obligations under existing certification and collective agreement from the vendor of the business to the purchaser.

Successor union: a union that succeeds another by means of a merger, amalgamation or transfer of jurisdiction.

Technological change: a change in equipment or materials or a change in the method of work because of the introduction of new equipment or materials.

Unfair labour practice: any conduct that interferes with the rights guaranteed by the Act — e.g. interference with the right to participate in the lawful activities of a union.

Union: an association of employees formed for the purpose of furthering their interests with respect to terms and conditions of employment through collective bargaining.

Voluntary recognition: acknowledgement by an employer of a union's status as bargaining agent for employees of the employer (generally by signing a collective agreement with the union) without formal certification of the union.

Union security clause: a clause in a collective agreement making union membership compulsory for all or some of the employees in a bargaining unit.

Work stoppage: a cessation of normal business operations due to a strike or lockout.

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